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**BEFORE THE  
RESPIRATORY CARE BOARD  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

Case No. R-2045

JUAN THOMAS MUNOZ  
1640 Hertle Lane  
San Martin, CA 95046

**A C C U S A T I O N**

Respiratory Care Practitioner License No. 22709

Respondent.

Complainant alleges:

**PARTIES**

1. Stephanie Nunez (Complainant) brings this Accusation solely in her official capacity as the Executive Officer of the Respiratory Care Board of California, Department of Consumer Affairs.

2. On or about November 21, 2002, the Respiratory Care Board issued Respiratory Care Practitioner License Number 22709 to Juan Thomas Munoz (Respondent). The Respiratory Care Practitioner license was in full force and effect at all times relevant to the charges brought herein and will expire on September 30, 2007, unless renewed.

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JURISDICTION

3. This Accusation is brought before the Respiratory Care Board (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 3710 of the Code states: “The Respiratory Care Board of California, hereafter referred to as the board, shall enforce and administer this chapter [Chapter 8.3, the Respiratory Care Practice Act].”

5. Section 3718 of the Code states: “The board shall issue, deny, suspend, and revoke licenses to practice respiratory care as provided in this chapter.”

6. Section 3750 of the Code states:

“The board may order the denial, suspension or revocation of, or the imposition of probationary conditions upon, a license issued under this chapter, for any of the following causes:

“(d) Conviction of a crime that substantially relates to the qualifications, functions, or duties of a respiratory care practitioner. The record of conviction or a certified copy thereof shall be conclusive evidence of the conviction.

“(g) Conviction of a violation of any of the provisions of this chapter or of any provision of Division 2 (commencing with Section 500), or violating, or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate any provision or term of this chapter or of any provision of Division 2 (commencing with Section 500).”

7. Section 3752 of the Code states:

“A plea or verdict of guilty or a conviction following a plea of nolo contendere made to a charge of any offense which substantially relates to the qualifications, functions, or duties of a respiratory care practitioner is deemed to be a conviction within the meaning of this article. The board shall order the license suspended or revoked, or may decline to issue a license, when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an order granting probation is made suspending the

1 imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the  
2 Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of  
3 not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information,  
4 or indictment.”

5 8. California Code of Regulations, title 16, section 1399.370, states:

6 “For the purposes of denial, suspension, or revocation of a license, a crime or act  
7 shall be considered to be substantially related to the qualifications, functions or duties of a  
8 respiratory care practitioner, if it evidences present or potential unfitness of a licensee to  
9 perform the functions authorized by his or her license or in a manner inconsistent with the  
10 public health, safety, or welfare. Such crimes or acts shall include but not be limited to  
11 those involving the following:

12 “(a) Violating or attempting to violate, directly or indirectly, or assisting or  
13 abetting the violation of or conspiring to violate any provision or term of the Act.

14 “(c) Conviction of a crime involving driving under the influence or reckless driving  
15 while under the influence.”

#### 16 COST RECOVERY

17 9. Section 3753.5, subdivision (a) of the Code states:

18 "In any order issued in resolution of a disciplinary proceeding before the board, the  
19 board or the administrative law judge may direct any practitioner or applicant found to have  
20 committed a violation or violations of law to pay to the board a sum not to exceed the costs of the  
21 investigation and prosecution of the case."

22 10. Section 3753.7 of the Code states:

23 "For purposes of the Respiratory Care Practice Act, costs of prosecution shall  
24 include attorney general or other prosecuting attorney fees, expert witness fees, and other  
25 administrative, filing, and service fees."

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1                   11.     Section 3753.1 of the Code states:

2                   "(a) An administrative disciplinary decision imposing terms of probation may  
3 include, among other things, a requirement that the licensee-probationer pay the monetary costs  
4 associated with monitoring the probation."

5   FIRST CAUSE FOR DISCIPLINE

6   (Conviction)

7                   12.     Respondent is subject to disciplinary action under sections 3750(d), 3752,  
8 CCR 1399.370(a) and (c) in that he was convicted of violating Vehicle Code section 23152(b),  
9 driving with a blood alcohol content greater than .08%. The circumstances are as follows:

10                   13.     On or about January 29, 2006, at 12:46 a.m., Morgan Hill Police Officer  
11 M. Cervantez responded to a report of a drunk driver at Jack in the Box restaurant in Morgan  
12 Hill. Officer Cervantez arrived on the scene and saw a male, later identified as respondent, sitting  
13 in the driver's seat of a large white truck. Officer Cervantez observed that respondent was passed  
14 out behind the wheel. He opened the driver's side door, and had to repeatedly ask respondent to  
15 turn off his vehicle and hand the Officer his car keys. Officer Cervantez asked respondent what  
16 was wrong, and respondent immediately admitted that he was drunk. Respondent said he had  
17 been drinking "Crown Royal" at home beginning at 9:00 p.m. the prior night, and that he had  
18 been drinking all night. He said he drove to Jack in the Box to get a drink, and admitted it was a  
19 bad decision. When Officer Cervantez asked respondent to perform field sobriety tests,  
20 respondent refused, and stated, "No, sir, I'm drunk. I won't pass field sobriety tests."  
21 Respondent was placed under arrest for violating Vehicle Code section 23152(b), driving with a  
22 blood alcohol content greater than .08%. At 1:24 a.m., Respondent provided breath samples and  
23 the results were positive in the amount of .26% /.26% alcohol content.

24                   14.     On or about March 10, 2006, a criminal complaint titled *People of the*  
25 *State of California vs. Juan Thomas Munoz*, case no. FF614902 was filed in Superior Court,  
26 Santa Clara County. Count 1 charged respondent with a misdemeanor violation of Vehicle Code  
27 section 23152(a), driving under the influence of alcohol. Count 2 charged respondent with a  
28 misdemeanor violation of Vehicle Code section 23152(b), driving with a blood alcohol content

greater than .08%. It was specifically alleged that respondent's blood alcohol level was .29%.

15. On or about March 30, 2006, respondent entered a plea of guilty. On motion of the District Attorney, Count 1 was dismissed in view of the plea. A factual basis was found for the plea, and respondent was convicted of Count 2, a misdemeanor violation of Vehicle Code section 23152(b), driving with a blood alcohol content greater than .08%, and the enhancement that his blood alcohol level was greater than .20% was admitted. Judge Susan Bernardini granted court probation for three years, ordered respondent to serve ten days in jail, attend a First Offenders Program for nine months and enroll within thirty days, and pay fines.

16. Therefore, respondent's license is subject to discipline based on his conviction for driving with a blood alcohol content greater than .08% in violation of Vehicle Code section 23152(b), which is substantially related to the practice of respiratory care.

#### MATTERS IN AGGRAVATION

##### May 2006 conviction:

##### Vehicle Code section 2800(a), willfully disobeying a peace officer

17. On or about January 22, 2005 at approximately 12:25 a.m., San Jose Police Officers responded to a report of a disturbance involving weapons at the Club Miami. Upon arrival, the security guards directed the officers to the parking lot at the rear of the club, and pointed out groups that were the main suspects. Officer Delorenzo saw several people staggering and being supported by others in the group. He ordered the group to "Stop!" He ordered respondent to put his hands on the trunk of the police car, but respondent refused and tried to walk away. Officer Delorenzo ordered him again, but respondent raised his hands in a fighting stance and began walking towards the officer. Officer Delorenzo believed respondent was going to fight him, and the crowd was shouting obscenities and advancing towards the officer. Officer Delorenzo drew his baton and ordered respondent to get on the ground and for the crowd to "stand back." Respondent kept advancing, and Officer Delorenzo struck respondent one time on his left leg to overcome his resistance and prevent his escape. Officer O'Neil then arrived and tackled respondent to the ground. Officer Delorenzo spoke with respondent, and noticed that respondent's eyes were red and watery and he had a strong smell of alcohol on his breath and

1 person. Respondent was then arrested

2 18. On or about April 19, 2005, a criminal complaint titled *People of the State*  
3 *of California vs. Juan Thomas Munoz*, case no. CC589077 was filed in Superior Court, Santa  
4 Clara County. Count 1 charged respondent with a violation of Penal Code section 148(a)(1),  
5 resisting an officer. On or about May 8, 2006, respondent was convicted on his plea of nolo  
6 contendere to an amended count of violating Vehicle Code section 2800(a), willfully disobeying a  
7 peace officer. He was placed on court probation for one year and ordered to pay fines.

8 November 2005 conviction:

9 Penal Code 415(a), disturbing the peace

10 19. On or about November 14, 2005, upon his plea of no contest, respondent  
11 was convicted of violating Penal Code section 415(a), disturbing the peace. The circumstances  
12 are as follows:

13 20. On April 5, 2005, at about 11:00 p.m., Hollister Police Officers were called  
14 to the Hollister Family Bowl on a report of a fight in progress. When the officers arrived, the  
15 manager told them that there were about three more men inside the bar who had been fighting.  
16 Officer Moretti and two other officers entered the bar and saw four men. Respondent was seated  
17 at the bar, and began yelling at the officers. Officer Moretti ordered respondent to move away  
18 from the other officers, but respondent ignored him and continued yelling. Officer Moretti then  
19 grabbed the back of respondent's jacket and pulled him away from the bar area. Respondent was  
20 arrested and booked for violating Penal Code section 242, battery and Penal Code section 647(f),  
21 public intoxication.

22 21. On April 25, 2005, a criminal complaint titled *People of the State of*  
23 *California vs. Juan Thomas Munoz*, case no. CR-05-00696, was filed in Superior Court, San  
24 Benito County. Count 1 charged respondent with a misdemeanor violation of Penal Code  
25 section 242, battery and Count 2 charged respondent with a misdemeanor violation of Penal Code  
26 section 415, disturbing the peace.

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1                   22.     On or about November 14, 2005, respondent entered a plea of no contest  
2 to Penal Code 415(a), disturbing the peace, and the District Attorney dismissed Count 1, Penal  
3 Code section 242, battery. Respondent was ordered to pay a fine of \$450.00 by July 12, 2006.

4   PRAYER

5                   WHEREFORE, Complainant requests that a hearing be held on the matters herein  
6 alleged, and that following the hearing, the Respiratory Care Board issue a decision:

7                               1.     Revoking or suspending Respiratory Care Practitioner License Number  
8 22709, issued to Juan Thomas Munoz.

9                               2.     Ordering Juan Thomas Munoz to pay the Respiratory Care Board the costs  
10 of the investigation and enforcement of this case, and if placed on probation, the costs of  
11 probation monitoring;

12                              3.     Taking such other and further action as deemed necessary and proper.

13  
14 DATED: September 12, 2006

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16   Original signed by Christine Molina for:  
17   STEPHANIE NUNEZ  
18   Executive Officer  
19   Respiratory Care Board of California  
20   Department of Consumer Affairs  
21   State of California  
22   Complainant  
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